

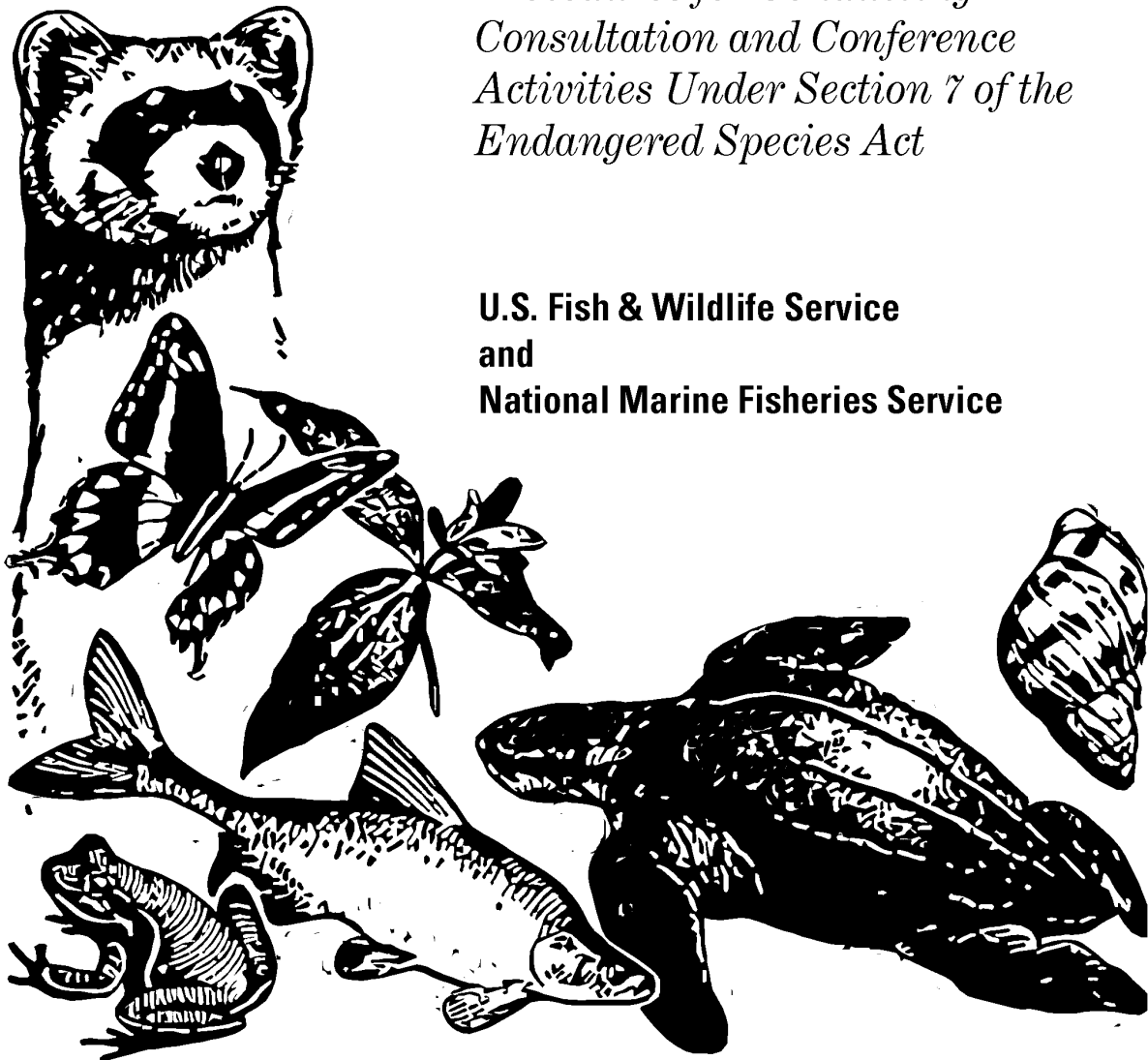
Endangered Species



Consultation Handbook

*Procedures for Conducting
Consultation and Conference
Activities Under Section 7 of the
Endangered Species Act*

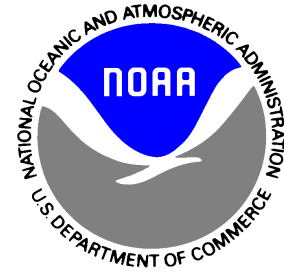
**U.S. Fish & Wildlife Service
and
National Marine Fisheries Service**



**March 1998
Final**



FOREWORD



It gives us great pleasure to introduce the final Section 7 Handbook. It is the culmination of much hard work by dedicated U.S. Fish and Wildlife Service and National Marine Fisheries Service employees. The Handbook provides internal guidance and establishes national policy for conducting consultation and conferences pursuant to section 7 of the Endangered Species Act of 1973, as amended. The purpose of the Handbook is to promote efficiency and nationwide consistency within and between the Services. The Handbook addresses the major consultation processes, including informal, formal, emergency, and special consultations, and conferences.

Through the section 7 consultation program, the Services strive to meet the consultation needs of all Federal Agencies. The Services work with their Federal partners to emphasize the identification and informal resolution of potential species conflicts in the early stages of project planning. They also provide information about listed, proposed, and candidate species and critical habitats to Federal agencies planning projects, and those applying for Federal permits and licenses. The Services work with Federal agencies on any action that is federally funded, authorized, or carried out that may affect a listed species and designated critical habitats. The Services advise the Agencies and applicants on how to avoid adversely impacting these species and habitats, and, where appropriate, the Services provide incidental take statements that allow take of threatened or endangered species that is incidental to an otherwise legal activity.

The Handbook will ensure consistent implementation of consultation procedures and development of associated documents by those biologists responsible for carrying out section 7 activities and provide the Services guidance necessary to assist other Federal agencies in meeting their responsibilities under section 7 of the Act. Although primarily targeted toward employees of the Services, other groups participating in the consultation process, including other Federal agencies, State, local, and tribal governments, private individuals, consultants, and industry groups should find the Handbook helpful in explaining section 7 processes and providing examples of various types of consultations.

We would like to take this opportunity to express our heartfelt thanks for the hard work and dedication of all those who have made the development of this Handbook possible. We especially want to thank those entities that have become conservation partners with our Agencies through this process. This document will be an important tool in threatened and endangered species conservation for our Nation.

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ENDANGERED SPECIES ACT CONSULTATION HANDBOOK

PROCEDURES FOR CONDUCTING

SECTION 7

CONSULTATIONS AND CONFERENCES

**U.S. FISH AND WILDLIFE SERVICE
NATIONAL MARINE FISHERIES SERVICE**

March 1998
Final

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Glossary of Terms used in Section 7 Consultations

Act - the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Action - all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air. [50 CFR §402.02]

Action area - all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. [50 CFR §402.02]

Affect/effect - to affect (a verb) is to bring about a change ("The proposed action is likely to adversely affect piping plovers nesting on the shoreline"). The effect (usually a noun) is the result ("The proposed highway is likely to have the following effects on the Florida scrub jay"). "**Affect**" appears throughout section 7 regulations and documents in the phrases "may affect" and "likely to adversely affect." "**Effect**" appears throughout section 7 regulations and documents in the phrases "adverse effects," "beneficial effects," "effects of the action," and "no effect." [Proper grammatical usage]

Anticipated/allowable/authorized - in incidental take statements, the Services determine the amount or extent of incidental take "anticipated" (expected) due to the proposed action or an action modified by reasonable and prudent alternatives. When writing incidental take statements, use only the phrase "anticipated" rather than "allowable" or "authorized," as the Services do not allow or authorize (formally permit) incidental take under section 7. [Clarification of usage]

Applicant - any person (an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States) [ESA §3(12)] who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action. [50 CFR §402.02]

Appreciably diminish the value - to considerably reduce the capability of designated or proposed critical habitat to satisfy requirements essential to both the survival and recovery of a listed species. [Clarification of usage]

Best available scientific and commercial data - to assure the quality of the biological, ecological, and other information used in the implementation of the Act, it is the policy of the Services to: (1) evaluate all scientific and other information used to ensure that it is reliable, credible, and represents the best scientific and commercial data available; (2) gather and impartially evaluate biological, ecological, and other information disputing official positions, decisions, and actions proposed or taken by the Services; (3) document their evaluation of comprehensive, technical information regarding the status and habitat requirements for a species throughout its range, whether it supports or does not support a position being proposed as an official agency position; (4) use primary and original sources of information as the basis for recommendations; (5) retain these sources referenced in the official document as part of the administrative record supporting an action; (6) collect, evaluate, and complete all reviews of biological, ecological, and other relevant information within the schedules established by the Act, appropriate regulations, and applicable policies; and (7) require management-level review of documents developed and drafted by Service biologists to verify and assure the quality of the science used to establish official positions, decisions, and actions taken by the Services during their implementation of the Act. [59 FR 34271 (July 1, 1994)]

Biological assessment - information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. Biological assessments must be prepared for "major construction activities." See 50 CFR §402.02. The outcome of this biological assessment determines whether formal consultation or a conference is necessary. [50 CFR §402.02, 50 CFR §402.12]

Biological opinion - document which includes: (1) the opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat. [50 CFR §402.02, 50 CFR §402.14(h)]

Candidate species - plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species. These are taxa for which the Fish and Wildlife Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions. [61 FR 7596-7613 (February 28, 1996)]

Conference - a process of early interagency cooperation involving informal or formal discussions between a Federal agency and the Services pursuant to section 7(a)(4) of the Act regarding the likely impact of an action on proposed species or proposed critical habitat. Conferences are: (1) required for proposed Federal actions likely to jeopardize proposed

species, or destroy or adversely modify proposed critical habitat; (2) designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning; and (3) designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat. [50 CFR §402.02, 50 CFR §402.10]

Conservation - the terms "conserve," "conserving" and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the] Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. [ESA §3(3)]

Conservation measures - are actions to benefit or promote the recovery of listed species that are included by the Federal agency as an integral part of the proposed action. These actions will be taken by the Federal agency or applicant, and serve to minimize or compensate for, project effects on the species under review. These may include actions taken prior to the initiation of consultation, or actions which the Federal agency or applicant have committed to complete in a biological assessment or similar document.

Conservation recommendations - the Services' non-binding suggestions resulting from formal or informal consultation that: (1) identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or proposed species, or designated or proposed critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or proposed species, or designated or proposed critical habitat; and (3) include suggestions on how an action agency can assist species conservation as part of their action and in furtherance of their authorities under section 7(a)(1) of the Act. [50 CFR §402.02]

Constituent elements - physical and biological features of designated or proposed critical habitat essential to the conservation of the species, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species. [ESA §3(5)(A)(i), 50 CFR §424.12(b)]

Critical habitat - for listed species consists of: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (constituent

elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. [ESA §3 (5)(A)] Designated critical habitats are described in 50 CFR §17 and 226.

Cumulative effects - are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation. [50 CFR §402.02] This definition applies only to section 7 analyses and should not be confused with the broader use of this term in the National Environmental Policy Act or other environmental laws.

Designated non-Federal representative - the person, agency, or organization designated by the Federal agency as its representative to conduct informal consultation or prepare a biological assessment. The non-Federal representative must be designated by giving written notice to the Director. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and the Federal agency must agree on the choice of the designated non-Federal representative. [50 CFR §402.02, 50 CFR §402.08]

Destruction or adverse modification of critical habitat - a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. [50 CFR §402.02]

Director - the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration; or the Fish and Wildlife Service Regional Director; or their respective authorized representative. [50 CFR §402.02]

Distinct Population Segment - "population," or "distinct population segment," are terms with specific meaning when used for listing, delisting, and reclassification purposes to describe a discrete vertebrate stock that may be added or deleted from the list of endangered and threatened species. The use of the term "distinct population segment" will be consistent with the Services' population policy. [61 FR 4722-4725 (February 7, 1996)]

Early consultation - a preliminary consultation requested by a Federal agency on behalf of a prospective permit or license applicant prior to the filing of an application for a Federal permit or license. [50 CFR §402.11]

Effects of the action - the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with

that action. These effects are considered along with the environmental baseline and the predicted cumulative effects to determine the overall effects to the species for purposes of preparing a biological opinion on the proposed action. [50 CFR §402.02] The environmental baseline covers past and present impacts of all Federal actions within the action area. This includes the effects of existing Federal projects that have not yet come in for their section 7 consultation.

Endangered species - any species which is in danger of extinction throughout all or a significant portion of its range. [ESA §3(6)]

Environmental baseline - the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process. [50 CFR §402.02]

ESA - the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

FWS - the U.S. Fish and Wildlife Service.

Federal agency - any department, agency, or instrumentality of the United States. [ESA §3(7)]

Fish or wildlife - any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [ESA §3(8)]

Formal consultation - a process between the Services and a Federal agency or applicant that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat). [50 CFR §402.02, 50 CFR §402.14]

Habitat Conservation Plan - Under section 10(a)(2)(A) of the Act, a planning document that is a mandatory component of an incidental take permit application, also known as a Conservation Plan.

Incidental take - take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant. [50 CFR §402.02]

Indirect effects - those effects that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur. [50 CFR §402.02]

Informal consultation - an optional process that includes all discussions and correspondence between the Services and a Federal agency or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat). [50 CFR §402.02, 50 CFR §402.13]

Interdependent actions - actions having no independent utility apart from the proposed action. [50 CFR §402.02]

Interrelated actions - actions that are part of a larger action and depend on the larger action for their justification. [50 CFR §402.02]

Is likely to adversely affect - the appropriate finding in a biological assessment (or conclusion during informal consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of "is not likely to adversely affect"). In the event the overall effect of the proposed action is beneficial to the listed species, but is also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species. If incidental take is anticipated to occur as a result of the proposed action, an "is likely to adversely affect" determination should be made. An "is likely to adversely affect" determination requires the initiation of formal section 7 consultation. [Clarification of usage]

Is likely to jeopardize proposed species/adversely modify proposed critical habitat - the appropriate conclusion when the action agency or the Services identify situations where the proposed action is likely to jeopardize the proposed species or adversely modify the proposed critical habitat. If this conclusion is reached, conference is required. [Clarification of usage]

Is not likely to adversely affect - the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. **Beneficial effects**

are contemporaneous positive effects without any adverse effects to the species.

Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. **Discountable effects** are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. [Clarification of usage]

Jeopardize the continued existence of - to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. [50 CFR §402.02]

Letter - refers to all written correspondence, such as letters, memoranda, or electronic mail messages, relating to a formal or informal consultation. [Clarification of usage]

Listed species - any species of fish, wildlife or plant which has been determined to be endangered or threatened under section 4 of the Act. [50 CFR §402.02]

Major construction activity - a construction project (or other undertaking having similar physical effects) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act (NEPA, 42 U.S.C. 4332(2)(C)). [50 CFR §402.02]

May affect - the appropriate conclusion when a proposed action may pose any effects on listed species or designated critical habitat. When the Federal agency proposing the action determines that a "may affect" situation exists, then they must either initiate formal consultation or seek written concurrence from the Services that the action "is not likely to adversely affect" [see definition above] listed species. [Clarification of usage]

Minor change rule - when preparing incidental take statements, the Services must specify reasonable and prudent measures and their implementing terms and conditions to minimize the impacts of incidental take that do not alter the basic design, location, scope, duration, or timing of the action, and that involve only minor changes. [50 CFR §402.14(i)(2)]

NMFS - the National Marine Fisheries Service.

No effect - the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat. [Clarification of usage]

Occupied critical habitat - critical habitat that contains individuals of the species at the time of the project analysis. A species does not have to occupy critical habitat throughout the year for the habitat to be considered occupied (e.g. migratory birds). Subsequent events affecting the species may result in this habitat becoming unoccupied. [Clarification of usage]

Plant - any member of the plant kingdom, including seeds, roots, and other parts thereof. [ESA §3(14)]

Population - "population," or "distinct population segment," are terms with specific meaning when used for listing, delisting, and reclassification purposes to describe a discrete vertebrate stock that may be added or deleted from the list of endangered and threatened species. The term "population" will be confined to those distinct population segments officially listed, or eligible for listing, consistent with section 4(a) of the Act and the Services' population policy. [61 FR 4722-4725 (February 7, 1996)]

Preliminary biological opinion - the opinion issued as a result of early consultation. [50 CFR §402.02]

Programmatic consultation - consultation addressing an agency's multiple actions on a program, regional or other basis. [Clarification of usage]

Proposed critical habitat - habitat proposed in the Federal Register to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under section 4 of the Act for any listed or proposed species. [50 CFR §402.02]

Proposed species - any species of fish, wildlife or plant that is proposed in the Federal Register to be listed under section 4 of the Act. [50 CFR §402.02]

Reasonable and prudent alternatives - recommended alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat. [50 CFR §402.02]

Reasonable and prudent measures - actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take. [50 CFR §402.02]

Recovery - improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. [50 CFR §402.02]

Recovery unit - management subsets of the listed species that are created to establish recovery goals or carrying out management actions. To lessen confusion in the context of section 7 and other Endangered Species Act activities, a subset of an animal or plant species that needs to be identified for recovery management purposes will be called a "recovery unit" instead of a "population." [Clarification of usage]

Section 4 - the section of the Endangered Species Act of 1973, as amended, outlining procedures and criteria for: (1) identifying and listing threatened and endangered species; (2) identifying, designating, and revising critical habitat; (3) developing and revising recovery plans; and (4) monitoring species removed from the list of threatened or endangered species. [ESA §4]

Section 7 - the section of the Endangered Species Act of 1973, as amended, outlining procedures for interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(2) requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Other paragraphs of this section establish the requirement to conduct conferences on proposed species; allow applicants to initiate early consultation; require FWS and NMFS to prepare biological opinions and issue incidental take statements. Section 7 also establishes procedures for seeking exemptions from the requirements of section 7(a)(2) from the Endangered Species Committee. [ESA §7]

Section 7 consultation - the various section 7 processes, including both consultation and conference if proposed species are involved. [50 CFR §402]

Section 9 - the section of the Endangered Species Act of 1973, as amended, that prohibits the taking of endangered species of fish and wildlife. Additional prohibitions include: (1) import or export of endangered species or products made from endangered species; (2) interstate or foreign commerce in listed species or their products; and (3) possession of unlawfully taken endangered species. [ESA §9]

Section 10 - the section of the Endangered Species Act of 1973, as amended, that provides exceptions to section 9 prohibitions. The exceptions most relevant to section 7 consultations are takings allowed by two kinds of permits issued by the Services: (1) scientific take permits and (2) incidental take permits. The Services can issue permits to take listed species for scientific purposes, or to enhance the propagation or survival of listed species. The Services can also issue permits to take listed species incidental to otherwise legal activity. [ESA §10]

Service(s) - the Fish and Wildlife Service or the National Marine Fisheries Service (or both).

Species - includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. [ESA §3(16)]

Survival - For determination of jeopardy/adverse modification: the species' persistence as listed or as a recovery unit, beyond the conditions leading to its endangerment, with sufficient

resilience to allow for the potential recovery from endangerment. Said another way, survival is the condition in which a species continues to exist into the future while retaining the potential for recovery. This condition is characterized by a species with a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, which exists in an environment providing all requirements for completion of the species' entire life cycle, including reproduction, sustenance, and shelter. [Clarification of usage]

Take - to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. [ESA §3(19)] **Harm** is further defined by FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.

Harass is defined by FWS as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. [50 CFR §17.3]

Threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. [ESA §3(20)]

Unoccupied critical habitat - critical habitat not occupied (i.e., not permanently or seasonally occupied) by the listed species at the time of the project analysis. The habitat may be suitable, but the species has been extirpated from this portion of its range. Conversely, critical habitat may have been designated in areas unsuitable for the species, but restorable to suitability with proper management, if the area is necessary to either stabilize the population or assure eventual recovery of a listed species. As recovery proceeds, this formerly unoccupied habitat may become occupied.

Some designated, unoccupied habitat may never be occupied by the species, but was designated since it is essential for conserving the species because it maintains factors constituting the species' habitat. For example, critical habitat may be designated for an upstream area maintaining the hydrology of the species' habitat downstream. [Clarification of usage]

Wildlife - See "fish or wildlife".

EXECUTIVE SUMMARY

Section 7

Section 7 of the Endangered Species Act (Act) [16 U.S.C. 1531 *et seq.*] outlines the procedures for Federal interagency cooperation to conserve Federally listed species and designated critical habitats.

Proactive Conservation Efforts by Federal Agencies

Section 7(a)(1) directs the Secretary (Secretary of the Interior/Secretary of Commerce) to review other programs administered by them and utilize such programs to further the purposes of the Act. It also directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of species listed pursuant to the Act.

This section of the Act makes it clear that all Federal agencies should participate in the conservation and recovery of listed threatened and endangered species. Under this provision, Federal agencies often enter into partnerships and Memoranda of Understanding with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) for implementing and funding conservation agreements, management plans, and recovery plans developed for listed species. Biologists for the Services should encourage the development of these types of partnerships and planning efforts to develop pro-active approaches to listed species management.

Avoiding Adverse Effects of Federal Actions

Section 7(a)(2) states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to **jeopardize** the continued existence of a listed species or result in the destruction or **adverse modification** of designated critical habitat. In fulfilling these requirements, each agency must use the best scientific and commercial data available. This section of the Act defines the consultation process, which is further developed in regulations promulgated at 50 CFR §402.

The Handbook

This handbook was primarily developed to aid FWS and NMFS biologists implementing the section 7 consultation process. The purpose of the handbook is to provide information and guidance on the various consultation processes outlined in the regulations. Additionally, the handbook will ensure consistent implementation of consultation procedures by those biologists responsible for carrying out section 7 activities. Chapters of the handbook deal

with major consultation processes, including Informal, Formal, Emergency, and Special Consultations; and Conferences.

Standardized language is provided for incorporation into Biological Opinion documents to achieve consistency and to ensure that all consultation documents are complete from a regulatory standpoint. Background information and example documents are provided in Appendices. Although primarily targeted towards employees of the Services, other groups participating in the consultation process, including other Federal agencies; State, local, and tribal governments; and private individuals, consultants, and industry groups should find the handbook helpful in explaining section 7 processes and providing examples of various types of consultations.

This handbook will be updated periodically as new regulations and policies are developed affecting implementation of the section 7 regulations, or as new consultation or assessment techniques evolve, and as additional examples or graphics become available.

The Washington Offices of the Services have the lead for preparation of the handbook. Regional offices are encouraged to develop example documents appropriate for their geographical area and individual situations, and to coordinate with other Federal and State agencies in distributing these documents.

Consultation Framework

Use of Sound Science

An overriding factor in carrying out consultations should always be the use of the best available scientific and commercial data to make findings regarding the status of a listed species, the effects of a proposed action on the species or critical habitat, and the determination of **jeopardy/no jeopardy** to listed species or destruction or **adverse modification/no destruction or adverse modification** to designated critical habitats.

The Services have jointly published a policy on Information Standards Under the Endangered Species Act [59 FR 34271 (July 1, 1994)]. This policy calls for review of all scientific and other information used by the Services to prepare biological opinions, incidental take statements, and biological assessments, to ensure that any information used by the Services to implement the Act is reliable, credible, and represents the best scientific and commercial data available.

Flexibility and Innovation

The section 7 process achieves greatest flexibility when coordination between all involved agencies and non-Federal representatives, and the Services, begins early. Often, proposed

actions can be modified so there is no need for formal consultation. The Services should ensure that all information needed to make an informed decision is made available. It is particularly critical when formal consultation begins that all parties are fully involved in providing information and discussing project options. Although it is the responsibility of the Services to make the determination of **jeopardy** or **destruction/adverse modification** in the biological opinion, action agencies and applicants should be fully informed and involved in the development of Reasonable and Prudent Alternatives, Reasonable and Prudent Measures, and Terms and Conditions to minimize the impacts of incidental take. Biologists should be creative in problem solving and look for ways to conserve listed species while still accommodating project goals.

Coordination

The Services have a policy to ensure coordination with State Agencies for gathering information in implementing the consultation program. [59 FR 34274-34275 (July 1, 1994)] The Services have a joint policy on coordination with tribal governments. Secretarial Order #32306 (June 5, 1997) entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" recognizes that the consultation process should include input from affected tribal governments. State and tribal government biologists often have information available that is pertinent to the description of the action area or to the species of interest in the consultation.

Shortening Timeframes

Recently, the Services have been implementing measures to streamline consultation processes. Examples include projects reviewed under the Northwest Forest Plan and nationwide Timber Salvage Program. These procedures have been able to effectively shorten consultation timeframes without giving up any protection for listed species/designated critical habitats or the use and review of the best available information. This has been achieved through enhanced interagency coordination, development of guidelines for implementation of a larger program (i.e. timber salvage) which can tier to an individual project (timber sale), and by providing consultation simultaneously with project analysis under the National Environmental Policy Act (NEPA). Biologists for the Services are encouraged to review examples of these streamlined consultations and to look for ways to incorporate streamlining techniques into other consultation procedures.

CHAPTER 1 - GENERAL INFORMATION

1.1 INTRODUCTION TO SECTION 7 CONSULTATION

Section 7 of the Endangered Species Act (Act) provides some of the most valuable and powerful tools to conserve listed species, assist with species' recovery, and help protect critical habitat. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species, and to address existing and potential conservation issues.

A review of the legislative history of the Act and its amendments makes it clear the drafters of the legislation were designing a law with the strength to protect species, while at the same time creating a mechanism encouraging a productive dialogue between project proponents and the agencies charged with implementing the Act.

Section 7(a)(1) directs the Secretary (Secretary of the Interior/Secretary of Commerce) to review other programs administered by them and utilize such programs to further the purposes of the Act. It also directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of species listed pursuant to the Act.

This section of the Act makes it clear that all Federal agencies should participate in the conservation and recovery of threatened and endangered species. Under this provision, Federal agencies often enter into partnerships and Memoranda of Understanding with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) for implementing and funding conservation agreements, management plans, and recovery plans developed for listed species. Biologists for the Services should encourage the development of these types of partnerships and planning efforts to develop pro-active approaches to listed species management, rather than reacting when a conflict occurs.

Section 7(a)(2) states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to **jeopardize** the continued existence of a listed species or result in the destruction or **adverse modification** of designated critical habitat. In fulfilling these requirements, each agency is to use the best scientific and commercial data available. This section of the Act sets out the consultation process, which is further implemented by regulation (50 CFR §402).

This handbook was developed to aid Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) biologists implementing the section 7 consultation process. Throughout the handbook, the term "Services" will be used to generically refer to both agencies together. However, this is not meant to imply that all actions discussed herein are

taken by the Services jointly. If a particular section applies to only one agency, the acronyms FWS or NMFS will be used.

By law, section 7 consultation is a cooperative effort involving affected parties engaged in analyzing effects posed by proposed actions on listed species or critical habitat(s). This handbook demonstrates the latitude available within section 7 to work with applicants and agencies during this analytical process.

The following thoughts are offered as an expression of the philosophy guiding section 7 work.

- o The biology comes first. Know the facts; state the case; and provide supporting documentation. Keep in mind the FWS's ecosystem approach to conservation of endangered and threatened species [59 FR 34273-34274 (July 1, 1994)].
- o Base the determination of **jeopardy/no jeopardy** on a careful analysis of the best available scientific and commercial data. Never determine the conclusion of a biological opinion before completing the analysis of the best available data.
- o Clarity and conciseness are extremely important. They make consultation documents more understandable to everyone. A biological opinion should clearly explain the proposed project, its impacts on the affected species, and the Services' recommendations. It should be written so the general public could trace the path of logic to the biological conclusion and complete enough to withstand the rigors of a legal review.
- o Strong interpersonal skills serve section 7 biologists well. Establishing a positive working relationship with action agencies enhances the Services' ability to do the job successfully. Remember, you are trying to assist the agency in meeting their section 7 responsibilities under the Act.
- o Present a positive image as a representative of your Service.
- o Section 7 consultation is a cooperative process. The Services do not have all the answers. Actively seek the views of the action agency and its designated representatives, and involve them in your opinion preparation, especially in the development of reasonable and prudent alternatives, reasonable and prudent measures, terms and conditions to minimize the impacts of incidental take, and conservation recommendations.

- o Use all aspects of section 7, especially opportunities for informal consultation where solutions can be worked out prior to the structured process mandated by formal consultation. Be creative, and make the process work to the species' advantage.
- o It is important to be consistent throughout a species' range when implementing section 7. Be flexible but not inconsistent. Study the law, the regulations and this handbook. Know the authorities and be flexible when it is prudent, but always stand firm for maintaining the substantive standards of section 7.
- o Take advantage of professional support within and outside the Services. For example, the FWS Division of Engineering can provide valuable technical review of development proposals. Attorneys in the Regional and field offices of the FWS Solicitor/NMFS General Counsel can offer advice on section 7 regulations and the latitude within which to conduct consultation. Similarly, the Services' law enforcement personnel may be able to answer questions about direct or incidental take.
- o Strive to solve problems locally.
- o An effective section 7 biologist is a good teacher and a good student. Seek every opportunity to teach the section 7 process within and outside the Services in an informative and non-threatening way. Learn all you can about other Services' programs, Federal action agency's mandates and procedures, and State/tribal/private agency's/client's needs and expectations.

1.2 AGENCY RESPONSIBILITIES

(A) Lead Regions for Consultation

Fish and Wildlife Service

When a proposed action takes place in more than one FWS Region, a lead FWS Region is assigned responsibility for the consultation. Generally, the lead FWS Region is the one in which the greatest impact or the largest number of affected species occur. The Regions involved agree on the appropriate lead Region to prepare and sign the biological opinion. If agreement cannot be reached, the matter is referred to the FWS Director.

Coordination between the FWS consultation lead Region and the FWS recovery lead Region becomes necessary when a FWS Region consults on a species for which it does not have recovery lead. The level of coordination is mutually agreed to and the lead FWS recovery Region may release other FWS Regions from responsibility for coordinating on **no jeopardy** or **no adverse modification** opinions. The FWS Regional Director signing the biological

opinion is responsible for its contents, and has final authority to make any **jeopardy** or other finding. However, any changes the lead Region may make in **jeopardy** or **adverse modification** determinations initially made by other Regions must be coordinated before multi-Region opinions are finalized.

Requests for consultation from agencies addressing geographically broad-based or extensive programs are referred to the FWS's Washington Office Division of Endangered Species. This Division coordinates with the Regions to decide whether to recommend formation of a national team or assign the consultation to a lead FWS Region for coordination with other involved Regions. A national team may report to a designated Regional Director or the Assistant Director for Ecological Services (AES). AES submits a recommendation to the FWS Director for consideration. The Director's decision will be communicated to the involved Regions.

National Marine Fisheries Service

Generally, the NMFS Regions are responsible for conducting consultations on activities occurring within their Region. If the activity occurs in more than one Region or the species covered by the consultation occurs in more than one Region, the Regions mutually decide upon a lead Region. If there is no agreement on a lead Region, then the Assistant Administrator for Fisheries (AA) designates a lead Region. The Endangered Species Division in the Office of Protected Resources (F/PR) conducts programmatic consultations and those with a national scope (e.g. EPA's Multisector general permit for stormwater). Currently, all formal biological opinions, with the exception of those conducted by the Southwest and Northwest Regions for anadromous species, are forwarded to the Headquarters Endangered Species Division for review and final clearance. For activities that the Southwest or Northwest Regional Director (RD) considers controversial, the RD must consult with the Director, Office of Protected Resources (Office Director), and advise the AA before the final action is taken.

(B) Signature Authority

Fish and Wildlife Service

The FWS's responsibility for implementing section 7 consultation and conference procedures generally rests with the Regional Directors. The Assistant Director for Ecological Services is the responsible official if the biological opinion or conference opinion is to be signed in the Washington Office. FWS Regional Directors and the Assistant Director for Ecological Services can delegate responsibility and signature authority on non-jeopardy biological opinions and conference opinions to subordinate line officers. For example, FWS Field Office supervisors have been given signature authority on non-jeopardy biological opinions for intra-Service (internal FWS) consultations (see Appendix E for the Intra-Service

Consultation Handbook). However, signatory authority for biological opinions finding **jeopardy** or **adverse modification** has not been delegated below the Regional Director/Assistant Director level.

National Marine Fisheries Service

The NMFS Director, Office of Protected Resources, has signature authority for all formal consultations except where this authority has been delegated to the Regions. In 1995, as a result of an increasing number of consultations concerning listed salmon, the Southwest and Northwest Regional Directors were delegated authority to sign all biological opinions for anadromous species, unless the opinion concerns an activity of the Department of Commerce (e.g., fishery harvests). All opinions concerning a Department of Commerce activity are signed by the Office Director.

The Office Director also signs biological opinions related to issuance of section 10 research permits, section 10 incidental take permits (except for anadromous species) or activities such as issuance of regulations. NMFS Regional Directors have signature authority for most informal consultations. However, the Office Director has signature authority for informal consultations on activities that cross regional boundaries or have national significance.

(C) Intra-Service Section 7 Consultation

Fish and Wildlife Service

Intra-Service consultations and conferences will consider effects of the FWS's actions on listed, proposed and candidate species. Candidate species are treated as if they are proposed for listing for purposes of conducting internal FWS conferencing. Although including candidate species is not required by law, it is Service policy to consider candidate species when making natural resource decisions. Therefore, candidate species will be considered during internal FWS conferencing. FWS units will consult or confer with the appropriate FWS Ecological Services field office on actions they authorize, fund, or carry out that may affect listed, proposed or candidate species or designated or proposed critical habitat. These actions include refuge operations, public use programs, private lands and federal aid activities, as well as promulgating regulations and issuing permits. A Service office requesting formal consultation provides the data required by the regulations at 50 CFR §402.14(c) and is treated as any other action agency (see Appendix E for a copy of the Intra-Service Consultation Handbook). Formal intra-Service consultation should occur on the proposed issuance of any section 10 permit.

National Marine Fisheries Service

NMFS conducts consultations on all activities that it authorizes, funds or permits that may affect listed species. Conferencing is conducted on proposed species. While NMFS does not consult on candidate species, they are considered when making natural resource decisions. Actions that warrant consultation includes fishery management plans, amendments to plans, permits issued under section 10 of the Act and the Marine Mammal Protection Act (MMPA) for research or incidental taking, and regulations issued under the Act, MMPA and Magnuson Fishery Conservation and Management Act. Biological opinions on these activities as well as other Commerce activities are reviewed and signed by the Director, Office of Protected Species.

(D) Information Standards and Sources

Best available scientific and commercial data

The Act requires the action agency to provide the best scientific and commercial data available concerning the impact of the proposed project on listed species or designated critical habitat. If relevant data are known to be available to the agency or will be available as the result of ongoing or imminent studies, the Services should request those data and any other analyses required by the regulations at 50 CFR §402.14(c), or suggest that consultation be postponed until those data or analyses are available as outlined in section 4.4(A) of this handbook.

Where significant data gaps exist there are two options: (1) if the action agency concurs, extend the due date of the biological opinion until sufficient information is developed for a more complete analysis; or (2) develop the biological opinion with the available information giving the benefit of the doubt to the species. These alternatives must be discussed with the action agency and the applicant, if any. Based on this discussion, a decision regarding the preparation of the biological opinion should be made and documented in the administrative record of that opinion. This subsequent analysis may have minor or major consequences (worst case scenario) depending on the significance of the missing data to the effects determination. The action agency also should be advised that if and when additional data become available, reinitiation of consultation may be required.

If the action agency, or the applicant, insists consultation be completed without the data or analyses requested, the biological opinion or informal consultation letter should document that certain analyses or data were not provided and why that information would have been helpful in improving the data base for the consultation. In formal consultation, this statement usually appears in the "effects of the action" section. The Services are then expected to provide the benefit of the doubt to the species concerned with respect to such gaps in the information base (H.R. Conf. Rep. No. 697, 96th Cong., 2nd Sess. 12 (1979)). This

subsequent analysis may have minor or major consequences (worst case scenario) depending on the significance of the missing data to the effects determination. The action agency also should be advised that if and when further data become available, the need for reinitiation of consultation may be triggered.

Section 7 biologists should seek out available information from credible sources such as listing packages, recovery plans, active recovery teams, species experts, State/tribal wildlife and plant experts, universities, peer-reviewed journals and State Heritage programs. Prior consultations on the species also can provide information on baseline and cumulative effects on the species and its habitat, and should provide the species status and environmental baseline data upon which subsequent consultations are based.

An overriding factor in carrying out consultations should always be the use of the best available scientific and commercial data to make findings regarding the status of a listed species, the effects of a proposed action on the species or critical habitat, and the determination of **jeopardy/no jeopardy** to listed species or destruction or **adverse modification/no** destruction or **adverse modification** to designated critical habitats.

The Services have jointly published a policy on Information Standards Under the Endangered Species Act [59 FR 34271 (July 1, 1994)] (see copy in Appendix A). This policy calls for review of all scientific and other information used to prepare biological opinions, incidental take statements, and biological assessments, to ensure that any information used by the Services to implement the Act is reliable, credible, and represents the best scientific and commercial data available.

Writing and bibliographic style

- o In section 7 consultation documents, keep the first letter of the word "section" lower cased, except when it begins a sentence.
- o Write and edit consultation documents according to:
 - (1) the Council of Biology Editors, Inc. (CBE) Style Manual, 6th edition, (1994), which outlines prose style for scientific writing;
 - (2) the Department of the Interior's rules of plain English as found in:
 - (a) "Readable Regulations: Eleven Models" for Department of the Interior bureaus written by The Murawski Group, Washington DC (1995)

(b) "How to Write Regulations and Other Legal Documents in Clear English" by the American Institute for Research, Document Design Center, Washington, DC (1991)

(c) "Plain English, a Better Way to Write Our Rules", memo from FWS Assistant Director for Ecological Services to Assistant Regional Directors (June 12, 1996)

- o Letters and memoranda on non-technical issues should be edited according to the conventions established by the Government Printing Office Style Manual.
- o Citations included in text should comply with the CBE Style Manual. Bibliographic references should use the following formats:
 - 1. Single author book.

Tobin, R. 1990. The expendable future: U.S. politics and the protection of biological diversity. Duke University Press; Durham, North Carolina.
 - 2. Multiple author book.

Pickett, S.T.A. and P.S. White. 1985. The ecology of natural disturbance and patch dynamics. Academic Press, Inc.; New York, New York.
 - 3. Scientific papers (spell out the entire name of the journal).

Ahlgren, I.F. and C.E. Ahlgren. 1960. Ecological effects of forest fires. Botanical Review 46:304-310.
 - 4. Unpublished reports (biological assessments, status surveys, section 6 reports, etc.). Cite the document as unpublished. Also include the author's name and the group it was prepared for, as well as their location.

Helms and Associates. 1992. Results of a diving mussel survey conducted at the Pattison Brothers, Inc. and Ag Products Co. facilities near Clayton, Iowa. Unpublished report prepared for Pattison Brothers, Inc.; Clayton, Iowa.
 - 5. Personal communication. Include title, company, office, city and state.

Campbell, T. 1992. Personal communication. Biologist. Environmental Project Office, Naval Air Weapons Station. China Lake, California.

6. Personal observation. Include title, company, office, city and state.

Bransfield, R. 1987. Personal observation. Fish and Wildlife Biologist.
Ecological Services Ventura Field Office, U.S. Fish and Wildlife Service, Ventura,
California.

(E) Early Alerts

Fish and Wildlife Service

The FWS Regional Directors provide the FWS Washington Office with an early alert to inform the Director of both draft and final biological opinions, preliminary biological opinions (early consultation), and conference opinions of regional or national significance likely to result in findings of **jeopardy** or **adverse modification**. The Region submits such alerts as soon as the Services' have completed the necessary analysis to determine if a jeopardy biological opinion or conference opinion is warranted and consultation with the federal agency/applicant has been unsuccessful in avoiding the jeopardy determination. Additionally, Regional Directors are encouraged to advise the Director of potentially controversial consultations before an early alert is required.

Submit the early alert to the Chief, Division of Endangered Species. The Division of Endangered Species will prepare a cover memo and forward the early alert to the Assistant Director for Ecological Services, who will forward it to the Director. Allow 10 days in Washington to be sure the alert has been reviewed by the Director. Regional Directors must first send in an early alert to Washington and obtain approval from the Director before signing any draft and final biological opinions, preliminary biological opinions (early consultation), and conference opinions of regional or national significance likely to result in findings of **jeopardy** or **adverse modification**.

Use the following format:

Exhibit 1-1. Format for an early alert

EARLY ALERT

Prepared for: Director

State(s):

Date submitted:

ISSUE: Draft/Final [jeopardy/adverse modification] [opinion/conference] for the [name of the project]

CONSULTING AGENCY/APPLICANT:

DATE CONSULTATION INITIATED:

DATE COMPLETION OF CONSULTATION IS DUE:

DATE OF ANY EXTENSIONS: (explain reason for extension)

PROJECT DESCRIPTION: (provide a brief summary)

EFFECT ON SPECIES/CRITICAL HABITAT: (provide a brief summary of effect on [species/critical habitat])

I. REASONABLE AND PRUDENT ALTERNATIVES: (list)

A. HAVE YOU COORDINATED WITH THE AGENCY/APPLICANT TO DEVELOP THE REASONABLE AND PRUDENT ALTERNATIVES? (yes)
(no) **EXPLAIN.**

B. HAVE YOU COORDINATED WITH ALL AFFECTED TRIBAL GOVERNMENTS TO DEVELOP THE REASONABLE AND PRUDENT ALTERNATIVES PER SECRETARIAL ORDER #3206?

(yes) (no) **EXPLAIN.**

C. IF NOT, HAVE THE PROPOSED REASONABLE AND PRUDENT ALTERNATIVES BEEN DISCUSSED WITH THE ACTION AGENCY/APPLICANT? WHAT WAS THEIR REACTION?

- D. IS THE AGENCY/APPLICANT WILLING TO INCORPORATE THE REASONABLE AND PRUDENT ALTERNATIVES AND AMEND THEIR PROJECT DESCRIPTION TO AVOID A JEOPARDY/ADVERSE MODIFICATION OPINION? (yes) (no) EXPLAIN WHY/WHY NOT.**
- E. IF THERE ARE NO REASONABLE AND PRUDENT ALTERNATIVES, WHAT IS THE SCHEDULE FOR COORDINATING WITH THE AGENCY/APPLICANT TO DEVELOP THEM? EXPLAIN.**

II. REASONABLE AND PRUDENT MEASURES: (list)

- A. HAVE YOU COORDINATED WITH THE AGENCY/APPLICANT TO DEVELOP THE REASONABLE AND PRUDENT MEASURES? (yes) (no) EXPLAIN.**
- B. IF NOT, HAVE THE PROPOSED REASONABLE AND PRUDENT MEASURES BEEN DISCUSSED WITH THE ACTION AGENCY/APPLICANT? WHAT WAS THEIR REACTION?**
- C. IS THE AGENCY/APPLICANT WILLING TO IMPLEMENT THE REASONABLE AND PRUDENT MEASURES TO MINIMIZE THE IMPACTS OF INCIDENTAL TAKE? (yes) (no) EXPLAIN WHY/WHY NOT.**
- D. IF THERE ARE NO REASONABLE AND PRUDENT MEASURES, WHAT IS THE SCHEDULE FOR COORDINATING WITH THE AGENCY/APPLICANT TO DEVELOP THEM? EXPLAIN.**

III. CONGRESSIONAL DISTRICTS AFFECTED:

(list the Senators/Representatives and their Congressional district)

IV. EXPECTED REACTION OF AGENCY/APPLICANT/OTHER INTERESTED PARTIES (tribes, States, NGOs):

REGIONAL OFFICE CONTACT: (name, office, phone number)

National Marine Fisheries Service

The NMFS Regions must provide the Chief of the Endangered Species Division and the Director, Office of Protected Resources, advance notice of any biological opinions that may result in a **jeopardy** or **adverse modification** conclusion and any biological opinion that is potentially controversial whether or not it results in a **jeopardy** or **adverse modification** conclusion.

(F) Release of Draft Documents

Providing action agencies or applicants an opportunity to discuss a developing biological opinion, preliminary opinion, or conference may result in productive discussions that may reduce or eliminate adverse effects. If an action agency asks to review a draft opinion or a draft conference report or opinion, the Services should provide a draft. The section 7 regulations do not specify how an action agency should ask for this review. Generally, a telephone request from the equivalent of a field supervisor or higher official, documented in the administrative record, is sufficient.

Applicants can request draft opinion/conference documents through the action agency. When an action agency then requests this document for the applicant, the Services must inform the action agency that, once released to an applicant, the document may no longer be considered an interagency memorandum exempt from the disclosure requirements of the Freedom of Information Act (5 USC §552(b)(5)).

If an action agency or an applicant has comments on a draft opinion or conference document, the action agency must provide those comments to the Services in writing for the record. An applicant may copy the Services with the comments it provides to the action agency. The Services will consider an applicant's comments or concerns when they are officially transmitted by the action agency. [50 CFR §402.14(g)(5)]

(G) Maintaining the Administrative Record

A good administrative record documenting and supporting a consultation and the resulting biological opinion is important, especially if a biological opinion is challenged or questions are raised concerning how or why certain conclusions were reached. At a minimum, administrative records for significant informal consultations, concurrences, conferences, and formal consultations should contain the following types of records as appropriate:

- o letters, memoranda, public notices, or other documents requesting the consultation;
- o summaries of meetings held, including dates, attendees, purpose, and results or conclusions;

- o summaries of field trips or site inspections, including dates, attendees, and photos of the site;
- o summaries of personal contacts between the biologist, the Federal agency, State or tribal biologists, applicant, consultant, private citizens or interest groups;
- o summaries of telephone conversations pertaining to the consultation, recorded on a standard telephone conversation record form;
- o written correspondence pertaining to the consultation, including correspondence from or to a prospective permit or license applicant;
- o electronic mail messages addressing meetings, field trips, personal contacts or correspondence referenced above that are pertinent to the decision-making process;
- o published material used in developing the consultation except bulky material, which can be referenced; and
- o other information used in the consultation process.

An example of the types of records that can be documented in an Administrative Record can be found in Appendix C.